IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 319 (SS) OF 2006

Prakash Singh,
S/o late Dan Singh,
R/o Village Doba, Post Office-Ganiadeoli,
Ranikhet, District- Almora. .....Petitioner.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, K.I.C. (4) Army Head Quarter, Kashmir House, PHQ P.O. New Delhi.
3. Chief Engineer, Head Quarter, Central Command, Lucknow-2.
4. Chief Engineer, Bareilly Zone, Military Engineering Services, Sarvatra Bhawan Station Road, Bareilly, Cantt. 243001. .....Respondents.

Mr. K.N. Joshi, Advocate for the petitioner.
Learned Standing Counsel for the Central Government.

Dated: 08.03.2006

Hon'ble Rajesh Tandon, J.

Both the parties have agreed that let the matter be finally disposed of at admission stage.

By the present writ petition, the petitioner has prayed for a writ Certiorari quashing the order dated 21.06.2004 (Annexure-4 to the writ petition) passed by the respondents. Further prayer has been made for a writ of mandamus directing the respondents to reconsider the case of the

petitioner for appointment in Group-D category post like Chaukidar & Mazdoor under the Dying in Harness Rules.

2. Briefly stated, the father of the petitioner was posted in Garrison Engineer, Military Engineering Services Ranikhet as Mazdoor M.E.S. No. 456739. He expired on 15.09.2002 in harness.

3. After the death of his father, the petitioner who is 8th passed and whose date of birth is 04.06.1978 moved a representation on 30.10.2002 along with no objection certificate of the family members before the respondents for appointment under the Dying in Harness Rules. When the respondents did not take any action on the representation of the petitioner, he moved another representation on 13.08.2003 before the respondents.

4. The claim of the petitioner was rejected on 21.06.2004 on the ground that two years and 11 months have already passed since the death therefore, compassionate appointment cannot be looked into.

5. The petitioner again made a representation on 01.06.2005 requesting the respondents to appoint the petitioner in Group-D category post anywhere in India.

6. Rule 7 of the Compassionate Appointment Of A Widow/Son/Daughter of Deceased Government Servant/Government Servant Retired On Medical Ground provides the criteria, the same is quoted below:-

"7. ***Determination/Availability of Vacancies***

(a) Appointment on compassionate grounds should be made only on regular basis and that too only, if regular vacancies meant for that purpose are available.

(b) Compassionate appointments can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The Appointing Authority

may hold back up to 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise, so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz. SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and, if he belongs to General category he will be adjusted against the vacancy point meant for General category.

(c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily age/ ad hoc/contract basis against regular vacancies, if he is eligible as per the normal rules/orders governing such appointments.

(d) the ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy e.g., sports quota vacancy.

(e) Employment under the scheme is not confined to the Ministry /Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment."

7. The Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** has held as under:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

8. The Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations are quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The

exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

9. It is settled that appointment on the compassionate ground is purely humanitarian consideration because of the fact that family will not be able to make both ends meet. The purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. Thus compassionate appointment is treated to alleviate the distress of the family.

10. The ground taken by the respondent for refusing the compassionate appointment to the petitioner on the ground that two years have already passed cannot be allowed to stand.

11. A writ of certiorari is issued quashing the order dated 21.06.2004 passed by the respondents. The matter is sent back to the respondents, who shall reconsider the claim of the petitioner for the appointment to the petitioner on Group-D post within a period of two months form the date of presentation of the certified copy of the order.

12. Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

08.03.2006
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